

**Town of Milton
Planning & Zoning Meeting
Milton Library, 121 Union Street
Tuesday, October 15, 2013
6:30 pm**

**Minutes are not Verbatim
Transcriptionist: Helene Rodgville**

1. Call Meeting to Order – Don Mazzeo called the meeting to order at 6:30 pm.
2. Roll Call of Members
Don Mazzeo: We'll do a roll call of Members

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| Barry Goodinson | Present |
| Lynn Ekelund | Present |
| Tim Nicholson | Present |
| Mark Quigley | Present |
| Don Mazzeo | Present |
| Virginia Weeks | Present (arrived late) |
| Linda Edelin | Absent |

Don Mazzeo: Also before we get into anything, I would like for members of the Commission particularly, to identify yourselves prior to making comments into the microphone, as well as our professionals that are sitting at the side table. It is most urgent that this happen, because our transcriptionist is having difficulty identifying who we are, for the record, so please just remember to put your name out there before you speak.

Lynn Ekelund: For the record, do our professionals have a microphone?

Robin Davis: Not yet.

3. Additions/Corrections to the Agenda
Don Mazzeo: Do we have any additions or corrections to this evening's Agenda?

4. Approval of agenda
Don Mazzeo: Hearing none, I'll accept a motion to accept the agenda.
Lynn Ekelund: Motion to accept the agenda.
Tim Nicholson: Second.
Don Mazzeo: All in favor to accept say aye. Opposed. Motion carried.

5. Minutes of September 17, 2013
Don Mazzeo: Do we have any comments, questions or corrections or deletions for those particular minutes?
Mark Quigley: They're just not quite that accurate, so I'll just leave that comment

in there. I understand why we're identifying ourselves and what we're saying.

Don Mazzeo: Okay, under those circumstances, I will accept that commentary. Do we have any other comments, questions? Hearing none, do we have a motion to accept minutes from September 17, 2013.

Lynn Ekelund: So moved. The only female present, Helene, so I don't have to identify myself.

Tim Nicholson: Second.

Don Mazzeo: All in favor say aye. Opposed. Minutes are approved.

6. Business – Discussion and possible vote on the following item:

a. Final Site Plan Review/Approval

The applicant, Petroleum Equipment, Inc., is requesting a final site review/approval to construct an underground propane tank field on a portion of the open space in Cannery Village. The proposed propane tank field will be located in the area of the Community Center. The property is further identified by Sussex County Tax Map and Parcel # 2-35-20.00-57.00.

Don Mazzeo: Do we have any comments from the engineer at this point, regarding this particular application? We don't have a microphone.

Robin Davis: We've only got one available. The other one is broken.

Bob Kerr, CBE Associates: Good evening. The only comment would be really for Mr. Thompson. There was an easement requirement and whether that's acceptable and then also at the building permit stage, there's a bonding requirement that you put on the applicant at the preliminary for restoration of the existing tank location; removal of the tanks and possible seeding of the original site.

Don Mazzeo: Do we have representation here this evening from the applicant?

Tim Nicholson: I think Seth wanted to say something.

Don Mazzeo: I'm sorry.

Seth Thompson: No problem. I'll just follow up on that. I provided my comments. Mr. Davis just showed me that they corrected the grantor on the easement. Initially it was Chestnut Enterprises. It's actually Chestnut Properties, LLC. The only other question I have, there's a reference in it to an agreement. I looked through the land records. There's a 2005 agreement; so just that if the applicant wants to clarify what service agreement they're referencing in the easement.

Don Mazzeo: Thank you Mr. Thompson. Under those circumstances, do we have representation here this evening from the applicant to respond to those questions?

Zach Crouch with Davis, Bowen and Friedel: There again we're here for final site plan approval. We've been through the Town's Engineer and we've addressed all the comments; we've received all the approvals. We did receive

two comments for the easement and I believe they were addressed, but this is a surprise to me, because I just submitted two additional copies with those two things being addressed. Besides that, we're here for final approval, so I'm sure if it's more the legality of it, we can work that out, but right now that's all I have. Based on the emails between the two attorneys, that's what we came up with.

Seth Thompson: The only issue is that the easement references an energy services agreement and it says of even date. I wasn't quite certain if that was referring back to the 2005 agreement that's already recorded; if you were going to be entering a new one?

Zach Crouch: I'll going to have to get the attorney's back involved. I've stayed away from that.

Seth Thompson: Gotcha. Okay. That was my question, because it would just go into the time length in terms of the services being provided.

Zach Crouch: I think they changed the time in there to 2040; on the last page.

Seth Thompson: Okay. Sorry, I'm just getting this now.

Zach Crouch: I think that was one of the concerns and they put a date on it, just so it didn't extend out there forever. So with that being said, I was under the impression that that was taken care of.

Seth Thompson: And that satisfies it. Thank you.

Zach Crouch: Thank you. With that said, we're all happy again.

Don Mazzeo: Then it would like from a legal standpoint, we're okay.

Seth Thompson: That's correct.

Don Mazzeo: Thank you. From an engineering standpoint all...

Bob Kerr: Yes.

Don Mazzeo: Everything has been satisfied and the applicant is ready and prepared to have a performance bond in place, according to the requirements that we put in as a condition.

Zach Crouch: Yes, we agreed to that from the beginning and yes, once we request a building permit that bond will be submitted as part of the building application.

Don Mazzeo: And Mr. Davis that would be part of your application process review?

Robin Davis: Yes, that is correct.

Don Mazzeo: Okay. Do we have any other questions or concerns from members of the Commission? Hearing none, I'll accept a motion to approve final site plan approval of this application.

Lynn Ekelund: So moved.

Mark Quigley: Second.

Don Mazzeo: All in favor say aye. Opposed.

Virginia Weeks: Abstention. I'm abstaining because I was not here at the beginning of this project and know nothing about how it was decided. Thank you.

Don Mazzeo: Motion is approved.

Zach Crouch: Thank you very much.

b. Off-Street Parking Waiver Policy

A policy establishing conditions by which the Planning & Zoning Commission may grant waivers for off-street parking application. This item was referred to the Commission by Town Council.

Don Mazzeo: 30 second recess to clear the room to clear the room. I'm open for comments, questions, concerns, lead the discussion, perhaps something from legal to start us off.

Seth Thompson: I read through the minutes and I can see where your Town Ordinance is different from a lot of Town Ordinances when it comes to waivers. So, for the most part a waiver would go to a Board of Adjustment. That's typically the way a municipality handles it and although they aren't bright lines, there are differences between quasi-judicial/administrative functions vs. a more legislative function. I think and I can only make this determination in reading your Code; obviously I wasn't the one that drafted those portions, but it seems like the parking waiver came to Planning and Zoning Commission based on the fact that you guys would be reviewing the site plans anyway. On some level, it might make sense for you to continue doing that, in that you probably would effectively perform that function; but when it comes to parking waivers for something other than a new site plan, it really seems like more of a Board of Adjustment issue. Those are my thoughts. You could send it all the way over to the Board of Adjustment, obviously, or make that recommendation to Council to change the Code to do that, I should say. The down side to that is the applicant is going to have to go to Planning and Zoning, as well as the Board of Adjustment, if that's what they're seeking. Now, waiver of parking could be that significant of an issue that the Town Council, based on your recommendation elects to do that, but that's kind of the grand view of it. It is a little bit odd that you're essentially granting a quasi-variance from your own requirements; just calling it a waiver and only having it apply to parking when you don't do it for other things.

Tim Nicholson: I'm a little confused with what you just said. What is your bottom line on this, Seth? Maybe you already said it and I just didn't understand it, but...

Seth Thompson: I think from a legal perspective it's defensible either way. You have your current method. It is different, but it's part of your Zoning, that obviously the Council approved as part of it's abilities to adopt a Zoning Code under Title XXII, Chapter 3. So I think it's defensible in that regard. You're just being asked to do something that very often a different body, in other municipalities, would do. If you think about it, just take it out of the context of parking, just any sort of requirement under your Zoning Code and

your Code is a little bit different, in that it doesn't really give use variance jurisdiction to the Board of Adjustment, but if you were trying to build a building and your setbacks were a little bit awkward, you would need a variance from that setback and somebody would go to the Board of Adjustment for that. Spatially, when you're talking about parking spaces, I think that's somewhat of an area variance. Only your Town Code has it going to Planning and Zoning, again presumably because you would be doing the site plan approval, but if it's the Commission's willingness... I certainly understand that you would want to make it abundantly clear that you're more an administrative quasi-judicial body that's reviewing applications and not necessarily granting variances or waivers from particular requirements in the Code.

Don Mazzeo: Thank you, Seth. Comments?

Barry Goodinson: I just would like some clarity. I don't want us to have to sort of nuance and make it up every time something comes along that we can say well on the one hand this and on the other hand that. I would like some clarity, so I guess my question is separate from this particular issue with the parking, what can we do to affect greater clarity in terms of roles and responsibilities and reading the minutes, it sounded like the Board of Adjustment was created after Planning and Zoning and so therefore there was some overlap and ambiguity. Is that correct?

Seth Thompson: I wouldn't say... Ideally you would be able to draft your Code that there isn't ambiguity. I think that's very difficult to do. It's hard to predict every possible scenario, but as far as your role, you're able to provide recommendations to the Town Council, where if you see something in your Zoning Code that you think is ambiguous, or you would like to have it clarified between when you're dealing with an issue vs. when the Board of Adjustment is dealing with an issue. That's part of your assigned duties, that you can make that recommendation to the Town Council.

Don Mazzeo: So in essence, this evening, as we sit here right this minute, we as a Commission can suggest by way of recommendations to Council that they change the Code Ordinances to make sure that a parking variance would fall under the jurisdiction of the Board of Adjustment and not Planning and Zoning.

Seth Thompson: That's correct. I'm looking at Section 220-99 under Advisory Report to Town Council, "A proposed amendment can be initiated by Planning and Zoning." So my suggestion, I always try and encourage people to take a broader view. I think occasionally we fall into the habit of changing a word or two and unfortunately, it's not viewed in the larger context and we end up fixing one ambiguity and creating another one. So, what I would recommend would be, if a majority of the Commission is in favor of that, I can have an Ordinance drafted up for you to consider at your next meeting and really work on the language to make sure it's what you intended and then you could vote to recommend it to Council.

Don Mazzeo: Thank you. Mr. Kerr, you were going to have a comment. I'm not ignoring you.

Bob Kerr: If my memory serves me right and it's been quite awhile since the rewrite of the Ordinance, but there was a Committee that in the review of this was concerned with just what Seth was saying, that something could come before Planning and Zoning and a parking issue arises and it goes on the agenda for the following month at Board of Adjustment and then maybe has to come back to Planning and Zoning and Planning and Zoning then maybe there's something else that it gets tabled and we were trying... I think there was an effort to streamline it many, many times prior to that rewrite. It seemed like every time there was a parking issue, it just bogged down going to Board of Adjustment and then did it go to Council, then it would come back to you and I believe that that's... I can't remember how it was rewritten, but I know there was discussion on trying to keep it as streamlined where oftentimes if you do need a variance, you know that kind of going into the project before you come before Planning and Zoning, you get that done and then you come forward, but so many times it might be in some of those gray areas on parking. You need 200 spaces and I've got 199 and ½, something like that.

Barry Goodinson: So in that case, you can kind of do one stop shopping. You can get the variance here or you can get it at the Board of Adjustment, but here it would be faster.

Bob Kerr: There should only be one place that you can get it and the preference was to allow you, looking at the site plan and the overall conditions, whether the parking was necessary. It came up, again if I remember correctly, before the... whatever the downtown area overlay is called, didn't used to have the no parking was required, in that area, so any time somebody wanted to do something downtown, there was a need for X number of new parking spots, unless you got a waiver. Then the overlay kind of came in at the end of the rewrite of the Zoning Ordinance, where they made it town overlay to allow certain things to happen in that zoning classification only.

Seth Thompson: Just to kind of put in my own two cents, Section 220-84 discusses the fact that if there are practical difficulties or unnecessary hardships in Zoning Code, that somebody could go to the Board of Adjustment. Now that's the broad language. I think the argument is if somebody needs a parking waiver, they have to come to you, because your language is more specific as to that issue. So the more specific language would override the general, so you shouldn't have a scenario where somebody could go to the Board of Adjustment because they think, well maybe those people are more friendly to me. You shouldn't be able to forum shop, so to speak. I think if you were interpreting the Code... otherwise you could effectively write out your parking waiver in saying that somebody could go to the Board of Adjustment. Construing those together, you end up

limiting the Board of Adjustment power because of the parking waiver.

Virginia Weeks: Mr. Chairman, I was the one that brought this to the Commission and I just want to say thank you Robin for including Ocean View and one other town in their parking. Apparently, they don't give waivers because that wasn't addressed in any of those papers, I believe. Secondly, I looked up Sussex County Board of Adjustment and I looked up Lewes Board of Adjustment on the internet, both of those are charged with giving variances.

Don Mazzeo: Who is?

Virginia Weeks: The Board of Adjustment. Apparently, what I think the problem with our Ordinance is when it describes and gives what the Board of Adjustment can do, when it says variances for some reason, the word "area" was placed before it, so the Board of Adjustment is limited to area variances, which puts us, I believe Mr. Thompson, in a unique position from other Towns and municipalities. I don't think anybody else is doing this.

Seth Thompson: And I think that's correct, but normally when you think of a Board of Adjustment there's the area variance where you're dealing with those spacial requirements and then there might be a use variances. Some towns call it the special use exception and the norm is for the Board of Adjustment to have control over that, as well. Mrs. Weeks is correct, you're a little bit out of the ordinary in terms of your limited Board of Adjustment jurisdiction.

Don Mazzeo: Do you see that being out of the ordinary as a positive and this is a question of the Commission, or is it a negative? This is a question. I'm not looking for a specific response. I'm saying, I don't know, personally and that's where I think our quandary has been, where does this lie?

Seth Thompson: In my opinion, I tend to follow with the norm based on reading the State Code in it's application. When Title XXII discusses Boards of Adjustment, it seems to me, that's only an enabling ordinance; you don't have to do that, but it seems to me your State Legislators thought this probably makes sense to put it in these people's hands.

Don Mazzeo: I would tend to agree with that philosophy.

Virginia Weeks: I would also prefer to see "cleaner" projects come before us. When we were looking at Pret Dyer's application for the White Farm for an LPD, he wanted something like 40 or 50 off required parking spots to be put onto the street. We had enough problems with an LPD, that I really think that anything extra like that is not in our purview. We should be looking at how it fits on the land and if it's serviceable and if it follows the Building Codes of the Town. Anything else, I think, should go to the Board of Adjustment. I will say that I would also counsel that if it's a waiver of parking for an event, for example, Fall Into Milton, then the Council has to decide if they want to have insurance in place; do they want these people to help pay for cops; do they want these people to help pay for trash and so on? I think that's a permitting policy that's a one short time thing that the Council can enable the

Town Hall to do or do themselves, once they establish a policy. I really think we should be out of the business of variances.

Lynn Ekelund: I agree.

Virginia Weeks: Thank you.

Don Mazzeo: Any other input from the other end of the table?

Tim Nicholson: I agree with what was said.

Don Mazzeo: Okay, well it sounds like a... Barry?

Barry Goodinson: Yes, I agree.

Don Mazzeo: It would appear at this point that we might want to refer this back to Council, with the recommendation that we, indeed, change so that parking variances...

Virginia Weeks: All variances.

Don Mazzeo: All variances. But we're talking about... therefore all variances go to the Board of Adjustment and I fully recognize that the Board of Adjustment is underutilized in this Town, fully underutilized. Commentary?

Seth Thompson: Yes, please. I just want to make sure that I understand the task, since I'll have to draft it. It could be that there are two different pieces of recommended amendment coming out, that the parking waiver is one and then changing the Board of Adjustment in its entirety to deal with use variances as the other. Because those are really two separate issues. I tend to think that amendments need to be done one at a time. The notion of slipping in riders and whatnot, I'm not a fan of that, so the other element is that very often you can have a problem where something might be defeated because a majority might support each particular element, but between the two it doesn't pass.

Don Mazzeo: I would ask that the Commission provides the input here to suggest that you do it in two pieces of the puzzle and move it out.

Seth Thompson: Great. Now Mr. Kerr mentioned to me that, I suppose you are going to want to make sure that when it comes to variances going to the Board of Adjustment, that doesn't affect your ability to deal with landscaping plans; I would probably just defer to him on that.

Bob Kerr: I was asking Seth how it would apply to landscaping, where somebody comes in and I'm using probably a silly example, that you have a 7' height requirement and there's a particular tree they want to use, that everybody thinks would be beautiful, but it's 6'; so now, does that take a variance that has to go to... Maybe that's a silly example, but how any change from a hard number has to then go to the Board or not. I only bring it up because somebody has to review that at some point down the road. So many times, something in the Code says ye shall do this, but it's been interpreted well maybe not this time. It makes it hard. Or sometimes when the motion says and all the things we talked about tonight. It makes it hard to review down the road.

Don Mazzeo: Comments?

Virginia Weeks: I think if it's in the Ordinance and it says you should do this,

you should do this. Choose another tree. Or go to the Board of Adjustment.

Don Mazzeo: Go to the Board of Adjustment. My philosophy is if it's clean cut, you must do this. If you don't, you must do that. Here we are looking at changing an ordinance that suggests any time there's a variance, it must go. It's not even a question at that point. To your 6'/7', it's got to go to the Board of Adjustment. You have a rule, use the rule. If you can't abide by the rule, then you're asking for a waive/adjustment to that rule and that's not us.

Seth Thompson: That's fine, I was just trying to put it into the context of the buffering landscaping and it does refer to an average crown spread of greater than 15' and I certainly understand the Chair's comment that if that's what the Town Council elected to put in their Zoning Code...

Barry Goodinson: They were put in place for a reason and you walk around this Town and you look at all sorts of decisions that were made in terms of building and landscaping and all of that stuff and you say how did that happen? My suspicion is more often than not, there was some little carve out like this that provided an exception to the rule and if we want this town to be what we want it to be, then we need to make it what we want it to be, rather than keep on carving out these exceptions.

Don Mazzeo: And if the rule we're using, height as your tree example, if 6' is better than 7', maybe we need to rewrite and adjust and change the ordinances to reflect what is more appropriate to today's conditions.

Robin Davis: To get back to Mrs. Weeks' comment, we'll go back several months, this all came about from an individual who is a member of a church and Mrs. Weeks brought up the special events. This is basically where all this started. It deals with more than just applications, but special events; Sunday church services; assemblies at the schools; funerals; parking in the grass. That's where it all came from, so what Mrs. Weeks said too, is it something maybe the Commission wants to say to Council, look at a special events, I won't say waiver, but something to that effect. Because Council's going to want an answer on that and because that's where this came from. It's not tied down to one application. It's tied down to these several things when Milton has the Farmer's Market and they're parking in the grass; when the funeral home is parking in the grass at Goshen or across the street; or St. John's Church is parking in that lot. That's where it came from, so it's not more or less that St. John's was told that they bought an off-site property; they wanted to put a parking lot there; they were told they would have to come to Planning and Zoning and go through the site plan review; have parking spots, covered bumpers, landscaping. They said we can't afford that, we don't want to do it. We just want to put gravel there and let people park there.

Barry Goodinson: Yeah.

Lynn Ekelund: No.

Barry Goodinson: No. The cases that you are citing, that is an on-going repetitive use. It may not be every single day, but it's every single weekend or in the case of the funeral home, it's whenever they have a funeral and

that's what their business is. For a restaurant, it's when they serve meals, because that's what their business is. So pretending that it's a special event or a special use, is kind of bogus, I think.

Robin Davis: But I looked at Section 228-42, General Requirements, number two says it shall be the responsibility of the owner of the property to provide the total number of off-street parking spaces required by this chapter for any use which is a large, erected, structurally altered after the effective date of this Chapter, so, I will use the school.

Barry Goodinson: What does that mean?

Robin Davis: That means that if the school is going to enlarge, they need to bring their parking requirements up to the Standards. If they're not going to and they were allowed to have 100 parking spots, they don't have to put more parking spots in and I don't think we have anything in our ordinance that talks about you can't park in the grass, except in residential areas in the front yard.

Virginia Weeks: Excuse me, I think that you guys are really mucking this up. It's just getting into the point of almost silliness. St. John's Church has something almost every night between all the Clubs that meet there; it's become sort of a community center, which is a good thing. If they went for a variance, they should have no problems getting it, because they have a hardship. There is no parking there. There's no parking available to them. So their lot, they should be easily granted a variance. The fact that when granted that variance the Zoning Board could say we're going to let you put parking there, but you're going to have to put some trees up to soften the view, the Board of Adjustment can do that and take care of the Town while it's doing these variances. The Farmer's Market, that might be a year to year thing that they come into the Council and say we're going to do this, we're going to have so many days downtown, we would like a permit please and the Council can say yes or no; because it's for the benefit of the Town. But Short's Funeral Parlor and the lot across the street, the lot across the street is a residential lot, I believe. It's not commercial. So there shouldn't be parking on it. Do they have enough parking at the funeral parlor? No, so they go for a variance and once again the Board of Adjustment says yes you may, yes you may park on grass, but please make sure that you have a proper egress and exit and that you are not riding over curbs and into this and it's easy. It's easy. It's just what should be done and whether or not the Council wants to waive the fee to somebody who's coming in with a plan that has to go to the Board of Adjustment first and just charge them one fee; that's good too.

Don Mazzeo: That's an administrative policy that the Council can take. They can waive fees if they so choose. We can't do that at this table.

Seth Thompson: Correct. I've always taken the position that Council's the one that's authorized to charge the fees, therefore, if they want to set that fee at zero; now they shouldn't do it arbitrarily, obviously, there has to be some basis. Some towns say we're not going to charge not for profits or non-

profits. Some towns say if it's a municipal function that you're performing, we're not going to charge you there. So it shouldn't be just arbitrary, but you're right, the Council has control over fees, so these seemingly have inherent control over waivers.

Virginia Weeks: I just meant that way it would not be a financial hardship for somebody coming to Planning and Zoning that needs a variance also. You would just simply forgive, if Council so chose, to forgive one of the fees.

Barry Goodinson: Virginia, I just want to qualify. You keep saying Planning; I'm assuming you mean the Board of Adjustment. Is that right?

Virginia Weeks: No, if we had, for example, supposing Pret Dyer came back with Dr. White's property and he wanted to place 50 required off-street parking places on the street. Before that comes to us that should be decided by the Board of Adjustment, whether or not he's allowed to do that and rather than having him pay to go to the Board of Adjustment and to Planning and Zoning, it's up to the Council to waive the fee.

Don Mazzeo: The Council waives.

Seth Thompson: Just to clarify on that last point, since it's LPD, I'm being told that that would be permitted, but that's just based on that example.

Virginia Weeks: It's permitted now because Planning and Zoning is allowed to muck with parking and perhaps we shouldn't be allowed to at all.

Don Mazzeo: That's why we have a Commission and we've got 6, 7, 8 members or whatever it is and we have a discussion based on the application and it's merits and you move forward from that point. Do we have a consensus now from the Commission to have a directive for our Solicitor? Does Seth understand what we're asking of you to have done now, which was to present two different pieces to go forward, independently of each other, to Council for their review.

Seth Thompson: Correct and please speak up if I've misunderstood, but one will be to deal specifically with the parking waiver and basically returning that to the Board of Adjustment jurisdiction, if you will. The other would be dealing with use variances, putting that in the Board of Adjustment's hands. So I'll draft those up as separate draft Ordinances and then we can discuss them. I tend to do the strike through as language I'm deleting and underlined, so that everybody can see what's going on and then we can consider them at the next meeting.

Don Mazzeo: Very good.

Barry Goodinson: Okay.

Virginia Weeks: Mr. Chairman, might I suggest that we ask the attorney to also let the Council know that in this way we will be following the principles that are followed in all the other municipalities in Delaware.

Don Mazzeo: That would be part of that conversation.

Seth Thompson: We can certainly draft a cover advisory report to the draft Ordinance itself.

Virginia Weeks: Thank you.

Don Mazzeo: That would be wonderful. Thank you Mrs. Weeks.

Mark Quigley: In the guise of Milton being business-friendly, that the fees, if there are any, be minimal to no fees. Maybe the fee is \$1 on a contractual basis, but little to no fee for being positive to business, as some of these waivers and applications.

Virginia Weeks: That's not our call.

Mark Quigley: It's my comment.

Don Mazzeo: Yes and you might want to use that as a potential add-on to the cover sheet, that fees that are charged might be changed, perhaps reduced. I see there's a question mark on our Treasurer's face.

Barry Goodinson: What are the fees? How burdensome...

Seth Thompson: I'll have to defer to Mr. Davis on that, but typically your application fee is designed to cover what you pay your professionals, but maybe I'm wrong on that. That's a separate charge?

Robin Davis: It's a \$400 application fee for a variance. That also requires once they submit an application they have to pay for the newspaper notice, which is roughly about \$100 and some dollars; just \$100 and change, maybe. Then they will have to send out certified letters to the properties within 200', at about \$6.50 apiece, so that could be, according to where it's at, it could be a mess and it could be a few. Normally, the Town Solicitor is at the Board of Adjustment meetings, they will be paying for that service which is not covered in the \$400. The only thing the \$400 covers is the Town doing the work and the public notice in the paper. If the Town Engineer needs to get involved, there will be that charge added to that too. So it could be \$1,000.

Don Mazzeo: Mark, might I ask then that you perhaps reconsider waiving fees across the board. I know we want to be business-friendly, but we can't go broke doing it, however, we do want to at least recognize that we have and I use the term loosely, non-profit organizations within Town, such as the church. Even though they may make money they don't consider themselves as a profit center; however, when you get down to a real business and I'll use the funeral home as a prime example, that's doing business. If they want to do something that's outside of the realm of what's authorized by our Ordinances, they should be willing and happily come along and pay the fees. I say happily, tongue in cheek, but recognize that that's part of their business. The church doesn't have a business.

Virginia Weeks: No different than any other place.

Don Mazzeo: Milton's Farmer's Market doesn't have a business, although they do raise money but again, it's under the guise of Town vs. and independent business. So I just would request that perhaps we look at it as a non-profit fee adjustment, but true business, I would tend to not make a waiver on those, or an adjustment, unless it's minimal, minimal changes, like instead of having \$400, make it \$300. That might be reasonable to bring people back into Town and we're not going to try to screw them. Conversely, I would then ask what are the fees in other Towns? Are we comparable and I

don't know that you have that at your fingertips, Robin?

Robin Davis: I don't have actual town's or city's, but I've seen \$1,000 application fees; I've seen \$1,500 application fees for variances.

Don Mazzeo: So we're very reasonable then.

Robin Davis: Because I think the reason for that is you are doing something that the Code doesn't allow, so if you really want to do that, you either play by the Code or you pay the fee. I think that's the reason.

Virginia Weeks: In other words, we envision our Town as being like this, if you don't want to be within that vision, you have to pay for us to consider letting you out of it.

Don Mazzeo: That sounds like a fair statement to me.

Seth Thompson: I could definitely be wrong on this, but I think a lot of Towns that have those higher fees, they might factor in the engineering or the legal review, so that we might not be comparing apples to apples.

Barry Goodinson: These are real costs that the Town is incurring, so it's not like the Town's making money off of this, they're just trying to cover their expenses. I do get it. I want to see businesses move into this Town more than anyone, but we certainly don't need businesses that have such a slim margin that \$50 on a fee is going to make a difference to them.

Don Mazzeo: Not to pursue this any longer in this vein, but we're not really here to talk about fees and the structure of fees. Let's put it back on point. Is there anything else that needs to be discussed concerning what we've asked Seth to do for us for the next meeting? We'll have two different pieces of potential legislation?

Seth Thompson: Correct. Two different draft Ordinances and I think it would be helpful if at the next meeting people were able to verbalize why they feel like it's a good idea. I try not to do that as the Solicitor, beyond the legal realm. Obviously, I don't get into public policy, but if the Commission wants to do that, I think that's appropriate, so as far as explaining why people think it's a good idea beyond the legal reasons for doing so, if people could be prepared and then we can basically amend the draft cover letter at that meeting, so that it can be ready to go.

Lynn Ekelund: Am I correct you're going to then draft a cover letter and two different pieces of legislation?

Seth Thompson: Correct.

Lynn Ekelund: Could I ask that you get that by email to the members of the Commission a certain number of days before the meeting, so we can look at it and at least have a basis for discussion?

Seth Thompson: Definitely. Whatever works best. I tend to do things at least seven days in advance, but I know some people might need a little bit more time.

Lynn Ekelund: Seven's fine for me.

Barry Goodinson: Seven's fine for me.

Mark Quigley: That will work.

Don Mazzeo: Thank you, Seth.

Seth Thompson: Thank you.

c. Procedures and Policy Review

Potential changes and/or updates pertaining to code, procedure/policy and administration/practice related items

Don Mazzeo: I am going to defer to Barry on this one, only to the extent that and I think each of you have already seen the email that Barry sent out and I will give you the table, Sir.

Barry Goodinson: It's more of a question. I was concerned to read in the Cape Gazette that the Town Council was changing the zoning downtown to allow for a specific restaurant, but in so doing, allowed for any restaurant in removing the special use or special exemption or whatever it's called and I read that you, Seth, had recommended that they refer it to Planning and Zoning for comment and then they chose not to do that. So I was concerned about that and then I went to the Town Code and I saw 220-99, "Every proposed amendment, unless initiated by the Planning and Zoning Commission shall be referred by the Town Council to the Planning and Zoning Commission." Now I assume maybe somewhere else in this big book, there might be something that's contrary to that or that I didn't see or nuances it, because if that's what they're supposed to do...

Don Mazzeo: Step up one notch and read that one.

Barry Goodinson: Alright. The other issue is, so they can choose to not send it over to us.

Seth Thompson: Sorry to interrupt, but just to get the Commission up to speed, at the last Council Meeting, the one at the beginning of this month, I was asked to draft an Ordinance to amend Section 220-99, so that the "shall" will become "may". In other words from mandatory to permissive, to resolve the ambiguity between 220-98, that says that the Council may amend it on it's own motion or upon recommendation by the Planning and Zoning Commission. Unfortunately, those two, 220-98 and 220-99 seem to be contradictory.

Barry Goodinson: Yes, why is that?

Seth Thompson: I couldn't tell you. It pre-dates me, so my suggestion... Well Council asked me to draft the ordinance that would change the "shall" to "may", which then makes it clear that Council can do it on their own volition without sending it to Planning and Zoning, but if they elect to send it to Planning and Zoning they can do so. You guys, because of... and my suggestion for sending it to you, was just based on the notion that it's always better to have more due process, than less, basically and that didn't carry the day, obviously. I believe they are going to do that... I don't like to prognosticate, but I believe they will be referring the amendment that changes "shall" to "may" to the Commission for you to provide an Advisory

Report, so I think the issue last time was that.

Barry Goodinson: What I don't like is they have two contradictory Codes here, or passages, or whatever the legal term is and then they get to pick and choose, which is just stupid, I think; because it doesn't create any consistency for people in the Town, it creates ambiguity. They can't anticipate what's going to happen. I just don't think it's right, so either they do it or they don't. My preference would be that they do do it, but somehow we create a relationship between Planning and Zoning and the Town Council where they see us as a resource and something that's helpful to them, rather than something that clearly they see as an impediment and it's going to slow things down. It's like don't ask him, he'll say no, so we won't ask at all. That doesn't serve the Town. I just think it's stupid.

Virginia Weeks: I would also like to reference Seth, if you would, 220-5(e), which says "That whenever the requirements of this Chapter are at variance with the requirements of other fully adopted rules, regulations or ordinances, the ordinance with the most restrictive provisions, or those imposing the higher standards, shall govern." So I don't think they had the ability to do what they did. That said, this is not a contest of who's got more muscles. That's not our purpose here. Our purpose here is how to move the Town forward. Special uses are permitted uses. They are special uses which restaurants and fast food were, because there are ramifications if you allow them willy nilly. If you allow restaurants or fast food in, anywhere in the downtown area, you have lost, by not making it a special exception, the ability to require that outside noise be terminated at 9:00 at night. For example, they could have acoustic music now until closing, probably, on a terrace. Loud. Two, you cannot talk about where is the fan and the smells from the kitchen and the fried food. Where is that exhaust going? Where is the dumpster going to be? How are you going to get to it? Is it within sight? Is it going to be enclosed? I mean there is a whole wide range. Special use doesn't mean that it's not permitted. It means that it's permitted, but it gives you an opportunity because of the intrusiveness of the use, to look at it.

Don Mazzeo: And with very specific conditions placed upon the application.

Virginia Weeks: Exactly.

Barry Goodinson: My concern is the Town Council has thrown away their ability to look closely at this, by granting this blanket.

Lynn Ekelund: Maybe not.

Seth Thompson: Well.

Virginia Weeks: Secondly, I would also like to say that if those of you that have your Code, if you open up to either the Comprehensive Plan or whatever, although I have to tell you Mr. Kerr, these maps are not easy to read and I believe they come from your company, right? The color coding is very difficult, the lines and so on meld into the brown and so it's very difficult to see where one ends and not. They allowed fast food, because one councilperson said a) Vintage Cafe and the Federal Street Gallery are fast

food. I don't know who made him God and determined that was fast food, but apparently he did. I would consider it a restaurant of the cafe style. Now fast food is allowed and within the Town Center we have the bank, M&T Bank and it's parking lot, which has to be probably a good 15,000 square feet; Charlie Jones' garage and all it's parking behind it and along side of it; you have Bodie's and you have Mrs. Betts' property, just to name a few that are not in the Historic District; therefore you have no design control over them. You have absolutely none.

Seth Thompson: Mrs. Weeks, they would still go through the site plan process. I think your point is well taken that when it comes to... the philosophy behind a specially permitted use is that it might not blend as easily with the neighborhood as an automatically permitted use. I understand your point there. There are some controls. Again, I think it's important to think that the Town has a noise ordinance and that sort of thing, so it's not quite the parade of the horrors, but I certainly understand your point. I do. In terms of the restaurant, this would be a great area for the Planning and Zoning Commission to take up this cause. The definitions of restaurant, both fast food and standard, are not particularly well-defined. I think the one subsumes the other, so if Planning and Zoning does want to take up the cause on trying to figure out how restaurants would be better suited in Town, the definitions would be a good place to start, because the way they're defined a fast food restaurant is simply an establishment whose principle trade is the sale of food and/or beverages in a form for consumption either on or off the premises, so the Vintage Cafe is that. I think it falls within that.

Virginia Weeks: So does Irish Eyes.

Don Mazzeo: Yes, they all do.

Virginia Weeks: What I was getting at in this, was that perhaps what needs to be done is a rather informal meeting between the Council and the Planning and Zoning Commission, to talk about these things and see if we can't come to an agreement of why these ordinances exist. It's not that we want to hold up development. It's not that at all. When I heard somebody the other night, I was at the meeting at the beginning of it, say Planning and Zoning, if they don't feel they have all the information, they won't decide something. Well, why not? They need to understand what our function is.

Seth Thompson: Right. I did point out that you have a 45 day time limit for providing your advisory report otherwise the Council can go forward and decide without it. I think you might have a very good opportunity to lay out to Council your position, assuming that you receive the Ordinance that changes "shall" to "may". Really, in effect they're saying we'd like to do certain things without you and in your Advisory Report, it doesn't matter to me. I don't get a vote. Nobody appointed me. I don't care which way you go on that, but that seems to be an opportunity to express how you envision this working, that once you receive a recommendation from Council... I'm sorry, receive an assignment from Council to give them an Advisory Report, that

you kind of envision it working a certain way.

Virginia Weeks: Exactly. The other thing that concerns me is I don't know, what did they do about reclassifying a home occupation from special permitted use to a permitted use?

Seth Thompson: They didn't act on that ordinance.

Virginia Weeks: They didn't pass the first reading?

Seth Thompson: Well it was read for the first time, but if I'm not mistaken I think it was tabled. Actually, I'm going off memory, but I believe Mr. Davis and he'll correct me if I'm wrong, was assigned to break up the list of State of Delaware licensees, that don't have corresponding Town licenses and figure out how many of these are potential home occupations.

Virginia Weeks: Because I would just really hate to see that ordinance rushed through the same way the restaurant one was. Thank you.

Don Mazzeo: Is there yet an opportunity for the Commission to have impact on this ordinance change that's about to take place about allowing restaurants? Is there still a Public Hearing that's going to be coming forward?

Seth Thompson: No, it was noticed at the Council as it was a Public Hearing. And that's really where the Public Hearing under your Zoning Code occurs, is at the Council level.

Don Mazzeo: At the Council level, so in effect then, whatever Council has voted upon 5-1, as I understand it, that is going to take place; outside of the realm of any input from Planning and Zoning whatsoever?

Seth Thompson: Well.

Don Mazzeo: That's either a yes or a no. Outside the realm of any input from Planning and Zoning. Mrs. Weeks has had probably 10 years worth of experience with Planning and Zoning and just tonight she mentioned a half a dozen things that were not, I won't say that probably because I was not at the meeting unfortunately myself, but I don't believe any of that was discussed and how did they come to a conclusion? This is a rhetorical question. How could you come to a conclusion without knowing everything and we're being accused of doing things or not doing things; we don't have all the information. It's amazing to me.

Virginia Weeks: And Board of Adjustment.

Seth Thompson: I don't think, at least the comments at the last Council Meeting weren't a criticism of the Planning and Zoning Commission directly; just that the process takes time. It wasn't that you aren't doing a good job, it was that...

Barry Goodinson: That we require real information rather than a Ouija Board.

Don Mazzeo: To make a real decision, you need real input.

Seth Thompson: I think the Council gets frustrated with the fact that and there's nothing in the Code that requires the two readings, although they tend to do that as a practice, but then the way your Code is set up, Council is supposed to refer the matter to Planning and Zoning first, unless you guys

initiate it, so the thinking is that's one Council Meeting and then you have your meeting that month and potentially if you don't give your report, let's say you take the full 45 days, you're going to be into the next month and then it will be the month after that that it goes on the Council...

Don Mazzeo: That's the second?

Seth Thompson: That's right, so it's potentially three or four months that can pass, so it's not the Commission, it's the process, so that was I think the Council's frustration in referring it to Planning and Zoning. Again, that's...

Don Mazzeo: Mr. Kerr, you have a comment?

Bob Kerr: More a question. If I'm hearing this right and I was not at the meeting, if it becomes Council "may"; does that mean something like a rezoning with an LPD could come in with Council and the entire LPD R-3 could be voted at the next meeting, because this says change by ordinance the boundaries of the District?

Virginia Weeks: Exactly.

Barry Goodinson: Right.

Bob Kerr: So essentially if...

Don Mazzeo: They're bypassing all input and expertise and I use the term very loosely, expertise, on this Commission.

Bob Kerr: I'm not sure, I'll defer to Robin, how the State Planning Office would look at that because of going through certain processes we have to do certain things in a certain order. It might screw that up.

Barry Goodinson: I have concerns about this because we are moving toward sort of this Master Planning Process and if this body is completely cut off at the knees, then I don't know how this Town is going to develop a plan that's going to have any staying power, that's going to have any buy-in, that's going to have any real information if we're going to be rushing through this stuff. It's just, I'll say it again, it's stupid. You can read it on the minutes.

Seth Thompson: And just to clarify, it does appear that by changing "shall" to "may" it's not just the regulations that affect the District, but it could be the District's themselves.

Don Mazzeo: That document is going to come to us for consideration, review and recommendation? No? The "may" part? That's going to come to us?

Seth Thompson: My impression is that it is.

Don Mazzeo: Okay.

Barry Goodinson: It may?

Virginia Weeks: May I ask, why is that going to come to us when the other didn't? Why don't they do whatever they want?

Don Mazzeo: It's a rhetorical question, don't answer it, Seth.

Virginia Weeks: Absolutely. How silly.

Don Mazzeo: I guess the gist of this conversation is the Commission feels very uncomfortable with the process that Council has taken as they pick and choose which items they want to send to us for review and which ones they

bypass us. We have no idea how they're going to utilize this Commission, then we don't need to have a Commission. That's on the record too.

Barry Goodinson: One of the concerns I mentioned earlier that you walk around this Town and you see these carve outs and you say, how did that ever happen? People drive through Milton and they say, gee, look at that cute little town, but that cute little town is sort of hanging by a thread and it's being gutted by death by 1,000 cuts. They've carved out Bodie's. They've carved out the bank. They've carved that gas station lot as not being part of the Historic District, as if you can't see that stuff from downtown. By carving that out, and then carving out all these other things, you're just property by property destroying the downtown fabric. Now, of course, where the bank is, there was no historic building there, but it doesn't mean that you can't put something there that's consistent with the historic nature of the downtown. Similarly where that gas station is. Yes, there was no historic building there, so you're not protecting a historic structure, but something should be there, that contributes to the character of the downtown.

Virginia Weeks: Street scape.

Barry Goodinson: There's no street scape, exactly. I think that if we want this Town to work, they've got to use all the tools at their hand and they're just not. They're choosing not to do it.

Don Mazzeo: Let's not belabor this a whole lot more...

Barry Goodinson: I'm sorry, Robin. We're not yelling at you. You just happen to be the...

Don Mazzeo: We're yelling at Councilman Coté who happens to be in the audience this evening. I did not recognize you and it's very intentional. I don't recognize council persons in the audience. It's not an open meeting, for that purpose. I would like to just finalize this. Is there a comment that we, as a Commission, through me or through the Solicitor, to take back to Council?

Tim Nicholson: I think you've already said it, or somebody said it.

Don Mazzeo: Which one?

Tim Nicholson: Well that we ask the Council what it is... how do they want to work with us?

Lynn Ekelund: Do they want to work with us?

Tim Nicholson: Okay, fair enough.

Virginia Weeks: Second, Mr. Chairman, if I may?

Don Mazzeo: Absolutely.

Virginia Weeks: This is a system of checks and balances, this thing about coming to us for a recommendation. It protects the Town. It keeps the Council from looking as if you can go to the Council and get what you want because they won't bother sending it to Planning and Zoning and you have an underground, easier way to do it, because your brother-in-law supplies eggs to the school, or some God awful thing.

Don Mazzeo: That's a good one. I like that.

Virginia Weeks: Well I didn't want to offend anybody and I figured nobody would get offended by that one, but it really is a system of checks and balances to have our recommendation and they're doing away with that.

Barry Goodinson: I agree. I'm always convinced of the rightness of my opinions. We all are, but we should have people around us who challenge us when we come up and have opinions and I think that what they're choosing to do to circumvent this, does not protect them from having their deeply held, but maybe flawed opinions corrected and challenged. I just think it's not okay.

Mark Quigley: I've been sitting here listening. It sounds like the issue is timing, time. They want to move quicker. Why don't we work on the process and keep the language as "shall" and work on the process of being more timely to satisfy what they feel is a need?

Virginia Weeks: I agree. But the simple fact of the matter is that what they did last Monday, there was time to get our... those people don't even have to be out of their store until the first of the year, so there was time to do it. There was time for the recommendation.

Mark Quigley: I agree, but let's listen to what they're really saying; what Council is really saying is they want to expedite the process and it sounds like what I said earlier about being pro-business. I haven't even talked to any of those people. It just makes sense. We all agree on we're supposed to be here and Planning and Zoning is supposed to be here and let's go through the process. The real issue is timing.

Don Mazzeo: I will respond to that with a question and I guess it would be to Seth. How does our Ordinance address the expediency of an application?

Seth Thompson: Again, the process would appear, at the Council level initially, where they then make a referral to Planning and Zoning and then you have 45 days to give your Advisory Report.

Mark Quigley: Okay, I have a question for you then. They make application at Council. How long, in reality, would it take for us to get that paperwork or that direction?

Seth Thompson: It's a day.

Mark Quigley: Okay, so why can't we have a meeting with Planning and Zoning three days later or a week later, instead of waiting to...

Seth Thompson: You would need the seven days to notice your meeting and that would be the one...

Tim Nicholson: It has to be publicly announced, right? There has to be a public notice of the meeting, correct?

Mark Quigley: Okay, so we go through that and then get it the day after. What's stopping it? What's stopping from expediting this process?

Seth Thompson: Again, it's the referral and then, I suppose the 45 days. The problem is if you guys cut it shorter, you have one opportunity and if you don't have a quorum then it's going to be difficult.

Don Mazzeo: Then it's gone.

Virginia Weeks: Then we would have to postpone the meeting a week and get a quorum, but the whole simple fact is if they had referred that to us a week ago last Monday, it could have that night been put on the agenda for tonight and they would have had it for their next meeting.

Barry Goodinson: But they didn't.

Virginia Weeks: But they didn't.

Lynn Ekelund: Exactly.

Bob Kerr: If I may. Something like the ordinance that you're talking about can move pretty quickly; but take the other thing where it's a zoning change with possibly an LPD; it has to go through State Plus review; that is not a quick process and the way the times are laid out in here, is to look at more or less the worst case. If it went before Council Monday of this week, to make it easier for my counting, and next Monday you were going to have a Planning and Zoning Commission; earlier you asked Seth to get stuff to you for review seven days in advance. Not there, or if it's something that I have to review, again, that review doesn't start until after Council does something, typically. Again, it might take a week or two to get through the review and then we try to get it to you... I try to get it to Robin, so that he can get it to you seven to ten days before. We have had times when you wanted to vote on something that we did not have the comments from the Plus Review and you delayed your action pending receipt of those. So, all of those things, you have to look at the worst case. We went through two or three attorney's ago, three or four attorney's ago, we were tasked with coming up with a flow chart of how you go through the process and I believe it was when you had the New Charter and the annexation had given dates in it that you had to do something in 90 days or 120 days and we went through the time line and it was impossible. It could not, physically, be done. It's still that way, but you haven't had any annexations so it hasn't been a problem. But you cannot physically do it in the time set in the ordinance, because of State Plan Review and Plus and all the things. That was the same time when Mayor and Council wanted to... an annexation was supposed to go to Mayor and Council and then go to Planning and Zoning and Mayor and Council wanted to change it that they would select a committee of Planning and Zoning and we suggested not doing that, because which three are we going to pick? Which three want it or which three don't want it; so it skew's the whole process. A lot of things don't make sense on a particular item, but you have to look at the ordinance as a whole, so when you start trying to change an ordinance for one little thing, you can screw up an awful lot of other things.

Barry Goodinson: I have a question. Is our system and our timing so out of whack with other towns? So for example, I get your point about being business-friendly. I don't know if someone's going to come to Milton and say, oh it's going to take me X number of days to get my restaurant set up

in Milton; but if I go to Milford, it's going to take me half of that. Is what we have here, similar to what other people have? Are we creating a disadvantage for ourselves by this system, or is it fairly common and it's just the way things are, because we want things to go through a particular process to catch problems and address issues to make sure there's a good outcome?

Bob Kerr: Not going to respond to all of that, because it's being recorded. I'll talk to you after the meeting, but your process is not that dissimilar from other communities. At one point, people were coming to Milton because it was quicker. It used to take almost a year to get your preliminary meeting with Sussex County back in '05, '06 time line. You submitted it today and next October you would have your first meeting. Then you would start your plans and have your second meeting, six or eight months after that. That was just because of the number of applications and they were very long meetings. That's shortened a little bit now. That was just because of the volume of applications. The step where a sub-division goes before Council to be submitted to Planning and Zoning, most Towns don't have that. It comes into the office. It goes to Planning and Zoning. When the rewrite was made, Mayor and Council made the decision they wanted to be the first to see it and the last to see it and it's always the last, because they're the ones that sign off. So there's almost a month because it has to be in last month, to be on this month's Council agenda and then it takes time to get all the comments before it comes to you.

Don Mazzeo: I'd like to recognize Councilman Côté this evening. He has input I would like to hear and I hope the Commission will allow that.

Mark Quigley: I have one thing to say. I think there's a clear difference between an LPD that has a large capital bank account, where there's an individual buying a building for \$300,000 or \$400,000 and then going to additionally put another \$200,000, \$300,000, \$400,000 into it. It could be a hardship for a small business, under \$1 million per se; where it may run a long period of time. Where these LPD's, it's built in. It's clear. So it's apples and oranges is exactly what I'm saying. It's not the same animal and I think maybe that needs to be addressed, also.

Don Mazzeo: These are all points that I think... we're on record. We have all this. We'll go through all these notes.

Barry Goodinson: I have a question and you might be able to address it. It seems to me and I know everyone's been frustrated that it's taken Amy Rae forever to be able to get her restaurant set up and she's talked about how difficult that process has been and I think the Town has kind of walked away from this thinking this is a hard place to set up a restaurant and I'm just wondering if what happened at the Town Council meeting is sort of a remedy of a problem that already happened, rather than addressing something that's something else.

Virginia Weeks: I just want to say one thing. A lot of Amy's problems were not from the Town; they were from the State. Federal Street and Union Street are state streets; St. John's wants to use that as a parking lot; that's a change. They may have to go to Georgetown. Georgetown may say, hey guys you can do that, but you have to pave it and you have to put in a 30' curb and we have to have stripes, just like we have down at Dr. Howard's wonderful building; we're helpless in that. The State mandates, so we could be opening ourselves to a whole lot of problems here.

Robin Davis: That's what I'd like to say, too...

Lynn Ekelund: Wait, wait, wait. Barry, I don't think you were here when we approved Amy's restaurant. She came before us twice. She had what, the first time we listened to her, we gave her preliminary approval. If two hours is too long to wait, nobody's going to make that better, so that was not a remedy that Town Council had to put into place, as far as Planning and Zoning was concerned.

Barry Goodinson: No, I guess my question is, I think that there's a general sense that it's hard to open a restaurant in Milton because of this particular situation and I don't think that the problems Amy encountered had anything to do with Planning and Zoning. I think there were other issues, as Ginny suggested.

Lynn Ekelund: But don't you think that rather than a general sense, the Town Council would know that it wasn't a problem with Planning and Zoning?

Barry Goodinson: I don't know what the Town Council thinks. I don't know what they were trying to solve.

Lynn Ekelund: But don't you think they would know?

Virginia Weeks: That is why I would like to have a meeting perhaps with the Council and some experts. I mentioned to Seth Thompson, there's a fellow named Max Walton who's an attorney and he has never represented a developer, he represents Towns mostly when they go to litigation. He is also used by the Delaware Institute for Public Administration (IPA), to give their courses; to help give their courses when they teaching Planning Boards about planning and Boards of Adjustment about Boards of Adjustment. He is an expert. Maybe we need him to come here and address or address the three land use boards for a day on a Saturday or something and show us where we belong and how we intermingle and don't. As far as paying for it, did you not put \$10,000 away in the budget for the Comprehensive Plan? I certainly feel that this is a preliminary to the Comprehensive Plan.

Mark Quigley: Part of the experts, I think we should get some of the local businesses that have actually gone through the process and have their input and let's hear what they have to say, because it's their dime, it's their dollar, it's their time...

Virginia Weeks: I agree, but that comes afterwards. First we have to know

what we're charged with doing.

Mark Quigley: Well, you're talking about bringing in an outside attorney, another expert. I'm saying let's bring in the businesspeople that have already gone through the process and paid and used their own money to open up a business in this town.

Tim Nicholson: I don't think this is an either/or thing.

Virginia Weeks: We're not talking about the same things.

Mark Quigley: Are we talking about two different things?

Don Mazzeo: Gentlemen and ladies, we are really not going anywhere very fast at the moment and I don't want to muddy the waters anymore than I believe, I believe that they have already been muddied. It started outside of this Commission, the muddying. It started even outside, in my opinion, of the existing Council and probably five or six Councils prior to that. We are living what we have in a set of ordinances, laws, regulations that are now on the books. If we, as a community, can't live within them, either we change them or we leave the community; whether it's a business, residential or anything else. Now that being said, I would like to hear from Councilman Coté.

Councilman Coté: In terms of putting that item...

Virginia Weeks: The parking waiver?

Councilman Coté: No, the restaurant. Whether eliminating restaurants from special uses, if Council had referred it here and Mr. Davis can help with this, was any of the paperwork available to put that particular restaurant on the agenda for this evening?

Robin Davis: Yes, since the meeting was Monday night, the agenda for the Planning and Zoning meeting did not get posted until Tuesday; since there was not a Public Hearing required at Planning and Zoning, that information could have been put in the packet on Wednesday or Thursday when they got their packets; so that Ordinance could have been forwarded to Planning and Zoning; they could have talked about it this evening and had a report back to Council at next month's meeting; if they had seen fit.

Councilman Coté: That was half of the question. The other half of the question, was this particular individual, who wants to open a restaurant in those spaces, have they filed any paperwork to do that?

Robin Davis: No. The individuals that have not settled on the property yet, so it's not theirs, so when they decide to move forward they will come in and now the way it is, it's done under administrative plan review, which is done at Town Hall and if it meets the requirements, they do not have to come here, because it's a permitted use.

Don Mazzeo: Permitted use in the zone.

Councilman Coté: So specifically, that item would not have been on the agenda this evening? The ordinance could have been, but not the specific application.

Don Mazzeo: Not that application.

Tim Nicholson: Because there is no application.

Robin Davis: Because technically we do not know if a restaurant's going on that property; or it's not just for that instance. We hypothetically know that's what it's for, but that individual might not ever submit an application for a business license for a restaurant on that property.

Don Mazzeo: In effect, that application doesn't exist. This Commission and I'm addressing Councilman Coté at the moment. This Commission doesn't and doesn't really "care" what that business is. Does it meet the requirements for that particular zone? If it does, then it goes forward. If it doesn't, it can't, under the conditions that it's presented to us. We did not see an application and apparently neither has Town Council. In effect, that particular application, I'm just going to say one more thing, that application could come through and as Mr. Davis has said, if it doesn't come through for a restaurant, he puts in Light Industrial; now, can he put that in there? Can the Town Council then change again and say, well that's okay? Point?

Councilman Coté: I would personally take that under advisement from the Solicitor.

Virginia Weeks: Checks and balances, folks.

Don Mazzeo: And we have bypassed checks and balances on this particular issue and I think I would like to close the discussion at this point regarding this issue.

Tim Nicholson: I think that's a great idea.

Lynn Ekelund: I second that.

Don Mazzeo: I know we kind of beat it to death, but I think and inasmuch as it is a critical area, it's very critical and venting sometimes helps, both ways.

Virginia Weeks: Mr. Chairman, I have one other suggestion since we're doing procedures and so on. I would like this Commission to consider requesting from the Council that they put a moratorium on LPD zoning for six to nine months, so we can review that Ordinance. It is full of holes and problems. Nobody has an application at the moment for an LPD, so it's a good time to do it and if they were to put a moratorium on it for nine months, it would give us time to tighten it up and to really look at it.

Lynn Ekelund: I second that.

Seth Thompson: You just want to put it on next month's agenda.

Don Mazzeo: Okay.

Virginia Weeks: Or could we ask you, as a request from us, we can't do that; the same as the parking waiver?

Seth Thompson: The difficulty is something as specific as a moratorium, I think it really needs to be noticed on the agenda.

Virginia Weeks: Okay. Thank you very much.

Don Mazzeo: We will have that for next month's meeting then.

Mark Quigley: Regarding c, procedures and policy review, I had brought

this up to Barry. We had a conversation out in the street. Somebody can come into Town, not own a piece of property and go get a building permit without owning the property. When you gave us the homework, the definitions and different things, I specifically went to definitions, because they're so vague and so loose, without the definitions the rest of the Code is useless and that's why I specifically went there. You gave us some direction of feet and setbacks, but without the definitions... so these people can go get a building permit on a property that they do not own and start to go through the steps. They can do that legally right now, well tomorrow, in Town Hall when it opens up.

Robin Davis: But there is a policy that states that will not allow a tenant to do things without notification to the owner; but it's not in...

Mark Quigley: When it goes to Court, they're going to say where is it in the book?

Don Mazzeo: And the book does not have that.

Mark Quigley: Any tenant can put up a garage on any landlord's property.

Robin Davis: We won't let that happen.

Don Mazzeo: Under what circumstances?

Mark Quigley: So here we go again with wink, wink, we're buddies and I'm selling eggs.

Virginia Weeks: Another thing, Mr. Quigley, is that for example on Dr. White's property, I believe that the application for annexation was made and done by Pret Dyer and he's the one... Dr. White never appeared for that. Pret Dyer, the developer, appeared at all times and it went through without ever hearing from Dr. White.

Robin Davis: Dr and Nancy White were at the meetings. They were there, yes they were.

Virginia Weeks: But we didn't hear from them, did we?

Bob Kerr: Not required to.

Virginia Weeks: Not required to.

Seth Thompson: Just to clarify on that, you can be an owner of an equitable interest in a property; so for instance, some people it's going to be part of their due diligence process that they're not going to buy the property if they're not going to get approved for what they intend to use the property for. If somebody has it under contract and that's one of the contingencies, then that person is not a stranger. They have an equitable interest in that property.

Don Mazzeo: Anything else that we would like to finalize?

Mark Quigley: You talked about beating a dead horse, so I'm sorry to resurrect it. I guess my question is, yes it feels good to vent; actually it doesn't feel good to vent, because it just gets me more irritated, unless we have some next steps and I don't know what those next steps are. I guess maybe we've determined what the next steps are and I just...

Don Mazzeo: We didn't.

Mark Quigley: Are we going to communicate with Town Council? Are we going to send a letter? What is the next step, because clearly we're not happy with the status quo.

Don Mazzeo: We are not, we as a Commission are not. Let's leave it at that. From the standpoint of policy or procedure, can I representing the Commission, which I believe I will represent the Commission faithfully, send a letter to Mayor and Council addressing the conditions by which this conversation took place this evening and the fact that we are very uncomfortable in the process that had just taken place? Just leave it as an open ended and to then request having an informal meeting, but I guess it has to be a meeting that's FOIA and all that.

Seth Thompson: It has to be noticed.

Mark Quigley: I like the idea of inviting the conversation, because if we're trying to position ourselves. We're angry and this is all being recorded, but if we want to position ourselves as a resource and collaborators, because we all do have the best intentions here and we want the best for this Town. If we want them to see this body as collaborators and as a resource, we need to...

Don Mazzeo: Bring it to the forefront and the only way to do that is to have a face to face meeting.

Mark Quigley: Yes.

Virginia Weeks: May I ask that the Chairman have that letter and that it be on the agenda for next month?

Seth Thompson: I think you can probably do it in the context of a Committee Report. I recognize you're a Commission, but you could seemingly submit a Commission Report to Council, but it sounds to me that you would like to invite the conversation that's really focused on the amendment process, is what it sounds like and if Council does refer it to you, then I think that's really the most squared up opportunity for the Commission to express its concern in terms of when Council may or may not elect to bypass them, if "shall" becomes "may".

Don Mazzeo: Under that circumstance, I will write an invitation to Mayor and Council for a future date, to be determined; recognizing that I'm not going to be around for the next three weeks; but that's neither here nor there and I would then also have, obviously, the Solicitor on site at the same time; and Robin, of course, would be invited. Whether he wants to come or not.

Lynn Ekelund: Don, when you put that in draft form, will you email it to everyone?

Don Mazzeo: I'll email everybody.

Lynn Ekelund: Is that something I don't know whether I missed on this and I'm trying to finalize it. Is this something that you're going to send out before our next meeting, or is this something that we are going to discuss at our next meeting?

Don Mazzeo: I would like to send out a draft version to each member and have your input, changes, cross outs, whatever and then forward that prior to our next meeting, determining when the meeting between Council and we will happen. It may not happen until January. I don't know this. If the invitation is not extended, it's never going to happen.

Virginia Weeks: Is that legal? Are we allowed to receive something by email, correct it and send it back?

Seth Thompson: Somebody might consider that a Rotary Meeting, or a Serial Meeting; where Commission Members are approving something one by one and that would technically constitute a meeting, so you're probably going to have to trust your Chair to write that invitation letter. I think the one thing that I would say is, again you're seemingly going to have the opportunity to deal with it when weighing in on the draft ordinance changing "shall" to "may". It's important to keep things in mind, in terms of the categories. That's dealing with amendments to the Zoning Code. Obviously you serve functions when it comes to the site plans, so I think sometimes we tend to blend everything that you do here at the Commission into one. They're really dealing with an amendment, although it would also be a rezoning, so not just an amendment to the Code, but also to the District's themselves. But I think it's important to think about when you're thinking about the possible "shall" to "may", it's important to think that it's not affecting your site plan functions, but it is affecting weighing in on any potential rezoning or any changes to the zoning ordinance.

Mark Quigley: I'd like to see that letter go sooner, rather than later.

Don Mazzeo: It has to because, again, I'm going to be gone for the next three weeks.

Mark Quigley: But I also just want to convey the urgency that we feel about this matter and if it sits too long, that sense of urgency is lost.

Don Mazzeo: Actually, what I'll do is I'll request a meeting inside the next 45 days and it's not necessarily going to happen, but I'll put a time frame in it and I'll also request that a response for a meeting will come back to me. In other words, I'll ask for 45 days and I also want to know that you got a copy of this and you're reviewing it and such and such and such. At that point, then I will send out an email and say I have received back from Mayor and Council. Since we have a representation here this evening from Mayor and Council, he'll already know it's coming.

Councilman Coté: Oh, I can tell them?

Don Mazzeo: I have no problem with that.

Councilman Coté: Okay.

Seth Thompson: It's fine that before you have to disseminate information by email; it's just when you're soliciting responses.

Don Mazzeo: Do we have any other business at this meeting this evening?

7. Adjournment

Don Mazzeo: May I have a motion to adjourn.

Tim Nicholson: So moved.

Virginia Weeks: Second.

Don Mazzeo: All in favor say yes. Opposed. Meeting adjourned at 8:04 p.m. I thank you all.